

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4578 OF 1991

Namdeo Vithal Sonawane
& Ors. ..Petitioners

 versus
Kondiba Gundiba Sonawane
& Ors. ..Respondents

Ms. A.R.S. Baxi for the Petitioners.
Mr. A. H. Palekar h/f. M. V. Sali for the
Respondents.

**CORAM : D. G. DESHPANDE, J.
DATE : 6TH NOVEMBER, 2006**

ORAL ORDER :

1. Heard counsel for the Petitioners and the
Respondents.

2. Land bearing Survey No. 136/3 of Village
Parewadi, originally belonged to Vithal Eknath
Sonawane and Kondiba Gondiba Sonawane was the
original tenant.

3. The original landlord Vithal Eknath Sonawane
died in the year 1953 leaving behind widow and two
sons. At the time of his death both the sons were

minors and third owner being the widow. All three of them were disabled landlords. This was the position on 1.4.1957. Thereafter, proceedings were started under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act"). There is an order of Mamlatdar and ALT, at Exhibit 'A' dated 9.2.1962. In that order, it is mentioned that Kondiba original tenant purchased half portion of Survey No. 35/3 (which is different from the survey number in dispute) and the remaining portion was in his possession as tenant. Landlord Vithal died in 1953 and in his place the name of his son Namdeo is entered as occupier of half portion of Survey No. 136/3. As the landlord was minor on 1.4.1957 and the tenancy of the tenant was not terminated before 1.4.1957 right of the tenant to purchase the land is postponed. This order is dated 9.2.1962.

4. Thereafter there is another order at Exhibit 'B' to the petition of the Additional Tahsildar and ALT. It is in proceedings under Section 32G of the Tenancy Act. These were fresh proceedings initiated in 1974. Notices were issued to the tenant and the landlord, informing the date of hearing on

17.12.1974. The notice of the landlord was received back as he left the address. Tenant though served, remained absent. In that background, Additional Tahsildar, ALT, by an order dated 17.12.1974 ordered that the purchase of the suit land should be declared as invalid under Section 32G (3) of the Tenancy Act. He further ordered that separate proceedings under Section 32-P should be held and intimation of the order should be given in the prescribed form. The parties and the Village Officer should be informed of the order.

5. Section 32G (3) provides that where any tenant fails to appear or make a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. Proviso to sub section (3) requires the Tribunal to communicate his order to the parties within 60 days to enable them to apply for review of the matter.

6. Section 32P about which there is reference in the order dated 17.12.1974 Exhibit 'B' gives powers to the Tribunal to resume and dispose of land

not purchased by tenant. It provides that "Where the purchase of any land by tenant under Section 32 becomes ineffective under section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the period specified, the Tribunal may suo moto or on an application made in this behalf and in case other than those in which the purchase has become ineffective by reason of section 32G or 32M, after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub section (2).

7. Thereafter in proceedings under Section 32P, the Additional Tahsildar and ALT passed an order Exhibit 'C' to this petition. The order is very short and therefore I am reproducing the same as it is :

"Proceeding under Section 32-G was held and the purchase was declared ineffective under Tenancy Case No. ER-15-A/Parewadi dated 7.12.1974.

Notices under section 32 P were therefore issued fixing the date 31.5.1979 for hearing. The tenant remained present and applied that has not received the intimation of decision of ineffective purchaser under Section 32-G of the B.T. & A.L. Act 1948. So far, there is no record in the case

papers as to whether the intimation of decision of ineffective purchase were sent to the tenant.

In view of these circumstances, the proceeding under section 32-P is dropped and the case is restored to section 32-G of the B.T. and A.L. Act, 1948."

This is the order of the Additional Tahsildar and ALT dated 31.3.1977. Then in 1982 the landlord filed Revision before the S.D.O. under Section 76K of the Tenancy Act. That Revision was held to be not maintainable because it was filed after one year. Then the landlord filed Revision before the MRT. That was also dismissed and hence this petition.

8. Counsel for the tenant contended that the SDO was perfectly justified in dismissing the Revision as it was filed after one year from the date of the order. He also supported the order of the MRT in which it was held that the applicant No.1 landlord i.e. Namdeo became major on 16.5.1967 and within two years of attaining the majority he has executed the sale deed on 10.7.1967 by negotiations with the tenant. Therefore, according to MRT, this was perfectly legal and valid sale deed and no interference is called for.

9. Counsel for the petitioner contended that the entire approach of the MRT and the courts below is totally illegal and wrong and totally perverse.

10. I have reproduced hereinbefore and referred to Exhibit 'A' first order, Exhibit 'B' second order and Exhibit 'C' the third order. In order dated 17.12.1974 Exhibit 'B' the Tahsildar has declared ineffective purchase of the land. I asked both the Advocates as to which purchase, the Additional Tahsildar is referring. Counsel for the respondent tried to contend that there is no reference to any specific purchase but it also declares that they are not entitled to purchase. The sale deed between the landlord and the opponent No. 1 to which heavy reliance is placed by the MRT is dated 10.7.1967. Apart from the sale deed or purchase, there is no other purchase in between the parties. The purchase of half of the land of Survey no. 53/3 by the original tenant Kondiba was not at all an issue and therefore there is no reference of the same in the order of the Tahsildar dated 17.12.1974.

11. Therefore, as pointed out earlier the only

purchase or sale as between the parties was dated 10.7.1967, the Tahsildar in order dated 17.12.1974 declared this sale or purchase as ineffective that is having no force in the eyes of law and then stated that the separate proceedings under Section 32P should be started. Thus, the provisions of Section 32-G as stated above gives power to the Tribunal to resume and dispose of the land not purchased by the tenant. When the purchase of the suit land is declared ineffective, rightly, ALT wanted to exercise powers under Section 32P.

12. Thereafter next order is passed in Exhibit 'C'. This is a common order under Section 32B. It is dated 31.3.1977. The order as stated above shows that the notices were issued under Section 32P fixing the date of 31.3.1977 (wrongly typed as 31.5.1979 in Exhibit 'C' to the petition). On that date the tenant was present and he stated that he has not received intimation or decision of ineffective purchase as per the order dated 17.12.1974.

13. So far as at this stage there is nothing wrong, but surprisingly the Additional Tahsildar ALT

while passing the order Exhibit 'C' and after taking note of the presence of the petitioner and his grievance about non receipt of intimation did not at all verify whether notices were issued to the landlord also or whether landlords were served with the notices. Tahsildar on the same day without verifying this vital and important aspect, set aside the order dated 17.12.1974 i.e. effect of that order is to drop proceedings under Section 32P and restore proceedings under Section 32G or case was restored to Section 32G of the Tenancy Act.

14. Admittedly, when the order dated 17.12.1974 was passed the tenant was served but was absent and the landlord's notice was received back as he has left the address. Therefore, there was no notice or intimation to the landlord about ineffective sale. If law requires notice to be given then the notice has to be given to both the sides but after started proceedings under Section 32P as soon as the tenant appear on the first day and make grievance that he has not received any intimation of the order dated 17.12.1974, the Tahsildar accepted this statement as a gospel truth and without waiting to verify or without verifying whether same intimation was

received by the landlord dropped those proceedings and restored the case to Section 32G. This is a perversity committed by the Tahsildar in his order dated 31.3.1977 Exhibit 'C' to the petition and even the SDO or MRT did not note this perversity.

15. I repeatedly asked the Counsel for the respondent whether Additional Tahsildar after restoring proceedings to Section 32G did anything further but counsel for the respondent had no information in this regard. However, in the judgment of the MRT, these things have been made clear after noting about restoration of case under Section 32G, the MRT has stated as under:

" Then on the same day on the evidence on record and on considering private purchase of the suit land by tenant on 10.7.1967 for Rs.300/- from the landlords, the said purchase was declared valid and the purchase certificate was ordered to be issued u/s 32-M."

16. If Tahsildar after dropping proceedings under Section 32P on the same day without waiting for the appearance of the landlord has merely on accepting the statement of the tenant gone to the extent of declaring the private sale valid and then issuing purchase certificate, then there cannot be

any case more serious and grave about total misuse of the powers by the Tahsildar. Everything appears to have been done in a haste with a view to deprive the landlord of his legitimate right to contest.

17. The other most important aspect of the matter which was lost sight of by the Tahsildar and MRT is their acceptance of the sale deed between one of the co-heirs of the original landlord and the tenant. Admittedly, the original tenant Vithal left behind his widow Sarubai and two sons Namdeo and Ankush. The sale deed in favour of the tenant upon which heavy reliance is placed by the MRT is between one of the landlords out of the 3 and the tenant, therefore before declaring the said sale deed as valid and under the provisions of the Tenancy Act, the court should have seriously considered all the legal aspects of the matter. But that has not been done by the MRT.

18. Therefore, in the first instance the Additional Tahsildar while dropping proceedings under Section 32P by order dated 31.3.1977 committed serious mistake as stated above and the MRT also committed serious mistake in accepting the sale deed

as final and that too legal under the provisions of the Tenancy Act when the sale deed in fact was between only one of the legal heirs and the tenants.

19. Counsel for the respondent repeatedly urged that if the revision was not filed within one year then the landlord does not get any right. He may be justified in making the submissions but this court is exercising jurisdiction under Article 227 of the Constitution, those are supervisory powers where it is found that the lower Authorities have committed grave and serious mistake in passing the order, the court cannot close its eyes to those illegalities on such technical grounds of limitation. Therefore, counsel for the respondent relied upon a judgment of the 18 Tenancy Law Report page 69.. That was for condonation of delay and the power of Collector. This judgment is of no use and applicable in the case in supervisory jurisdiction when this court finds, as stated above, serious lapses made by the authorities below, their orders cannot be sustained.

20. As a result the impugned order of MRT at Exhibit 'E' dismissing the Revision Application of the Petitioner is set aside and consequently the order dated 17.12.1974 of the Additional Tahsildar &

ALT, Karmala is also set aside. Proceedings under Section 32P and order of restoration of proceedings under Section 32G are also set aside. The petition is allowed. Rule made absolute as stated above. The landlord may apply for possession of the land which is the consequence of final order of this Petition to the Authorities, and, they will decide it within three months from the date of certified copy of this order. Certified copy expedited.

(D.G. DESHPANDE, J.)